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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15
16 IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

17 THIS DOCUMENT RELATES TO:
18 ALL ACTIONS
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Master Docket No. 11-CV-2509-LHK

**DEFENDANTS' RENEWED
ADMINISTRATIVE MOTION TO SEAL
FILINGS RELATED TO PLAINTIFFS'
SUPPLEMENTAL MOTION FOR
CLASS CERTIFICATION**

1 In its Order Granting in Part and Denying in Part Motions to Seal dated March 14, 2014
 2 (ECF No. 730) (“Sealing Order”), the Court denied without prejudice certain requests to seal
 3 documents and allowed the filing of renewed motions to seal. Accordingly, Defendants Apple
 4 Inc. (“Apple”), Google Inc. (“Google”), Intel Corporation (“Intel”), and Intuit Inc. (“Intuit”)
 5 (collectively, “Defendants”) hereby jointly move to seal more narrowly tailored portions of the
 6 documents described further below, which reflect highly confidential information the public
 7 disclosure of which would cause harm to Defendants. In addition, the Court granted certain of
 8 Google’s sealing requests “as to redacted portions” although no redacted portions were
 9 submitted; Google is therefore submitting proposed and narrowly tailored redacted versions of
 10 those exhibits for the public record.

11 As described further in Section I below, the documents subject to Defendants’ renewed
 12 sealing requests are:

13 (1) The following exhibits to the Declaration of Lisa J. Cisneros in Support of
 14 Plaintiffs’ Supplemental Motion for Class Certification (ECF No. 418-2) (“Cisneros Exhibits”):
 15 Q, R, S, T, V, W, X, EE, FF, II, JJ, 173, 176, 472, 608, 614, 616, 621, 660, 666, 668, 674, 1130,
 16 1376, 1600, 1606, 1609, 1613, 1618, 1625, 1629, 1753, 2422, 2425, 2426;

17 (2) Exhibit 14 to the Declaration of Dean M. Harvey in Support of Plaintiffs’
 18 Supplemental Motion for Class Certification (ECF No. 418-1);

19 (3) The following exhibits to the Declaration of Christina Brown filed in Support of
 20 Defendants’ Opposition to Supplemental Class Certification Motion (ECF No. 445) (“Brown
 21 Exhibits”): 8, 9;

22 (4) The following exhibits to the Declaration of Lin W. Kahn in Support of
 23 Defendants’ Opposition to Plaintiffs’ Supplemental Motion for Class Certification (ECF No.
 24 446) (“Kahn Exhibits”): 2, 7, 8 and 13; and

25 (5) The following exhibits to the Declaration of Anne B. Shaver in Support of
 26 Plaintiffs’ Reply in Support of Supplemental Motion for Class Certification (ECF No. 456)
 27 (“Shaver Exhibits”): E, F, J, K, and O; (collectively, the “Sealed Materials”).

Defendants are filing corresponding declarations in support of their respective renewed sealing requests as to the Sealed Materials.

I. DEFENDANTS' RENEWED SEALING REQUESTS

A. Cisneros Exhibits Q, R, S, T, V, W, X, EE

The Court denied without prejudice Google's requests to seal Cisneros Exhibits Q, R, S, T, V, W, X, EE (deposition excerpts) as to the redacted portions identified by Google. Sealing Order at 14-15. Google now seeks to seal only narrowly tailored portions of those exhibits that reflect the most highly confidential information regarding Google's compensation and recruiting strategies and practices, the public disclosure of which would cause harm to Google. Certain exhibits also contain personally identifying information which Google has redacted to protect the privacy of third parties.

B. Cisneros Exhibits 176, 472, 608, 614, 621, 660, 666, 668, 674, 2422

The Court denied without prejudice Google's requests to seal Cisneros Exhibits 176, 472, 608, 614, 621, 660, 666, 668, 674, and 2422 because Google requested to seal these exhibits "in [their] entirety" and the Court found that "Google has not made a particularized showing that all of the information contained therein is 'confidential.'" Sealing Order at 17-22. Accordingly, Google seeks to seal only narrowly tailored portions of those exhibits that reflect the most highly confidential information regarding Google's compensation and recruiting strategies and practices, the public disclosure of which would cause harm to Google. Certain exhibits also contain personally identifying information which Google has redacted to protect the privacy of third parties.

C. Cisneros Exhibits 173, 616, 1600, 1606, 1609, 1613, 1618, 1625, 1629, 1753, 2425, 2426 and Harvey Exhibit 14

In its Sealing Order, the Court granted Google's sealing requests as to certain exhibits to the Cisneros Declaration and Harvey Declaration (Cisneros Exhibits 173, 616, 1600, 1609, 1613, 1618, 1625, 1629, 1753, 2425, 2426 and Exhibit 14 to the Harvey Declaration) "as to the redacted portions identified by Defendants." Sealing Order at 17:3-4; 20:8-20; 23:27-28.

1 However, no redacted versions of those exhibits were submitted by Google as part of its original
2 sealing request on May 17, 2013; rather, Google had requested that these exhibits be maintained
3 under seal in their entirety. Declaration of Eric B. Evans, ECF No. 427. Therefore, Google
4 respectfully files narrowly tailored *redacted* versions of those exhibits herewith, which Google
5 respectfully requests this Court to allow to be maintained under seal in *redacted* format. The
6 redacted portions of these exhibits reflect highly confidential information regarding Google's
7 compensation and recruiting strategies and practices, the public disclosure of which would cause
8 harm to Google. Certain exhibits also contain personally identifying information which Google
9 has redacted to protect the privacy of third parties.

10 **D. Shaver Exhibits E, K and O**

11 The Court denied without prejudice Google's requests to seal Shaver Exhibits E and K
12 and Google's and Apple's requests to seal Shaver Exhibit O (deposition excerpts) as to the
13 redacted portions identified by Google and Apple. Sealing Order at 34-35. Google and Apple
14 now seek to seal only narrowly tailored portions of those exhibits that reflect the most highly
15 confidential information regarding their compensation and recruiting strategies and practices, the
16 public disclosure of which would cause them harm. Certain exhibits also contain personally
17 identifying information which Google has redacted to protect the privacy of third parties.

18 **E. Cisneros Exhibit 1130**

19 The Court denied Apple's request to seal Cisneros Exhibit 1130 as to the redacted
20 portions identified by Apple. Sealing Order at 19. These redactions included two specific
21 percentage figures that the Court ordered sealed in Cisneros Exhibit P (deposition excerpts
22 discussing Cisneros Exhibit 1130). Sealing Order at 14. Apple now seeks to seal only these
23 same two percentage figures, which reflect its highly confidential compensation information, the
24 public disclosure of which would cause harm to Apple.

25 **F. Cisneros Exhibit 1376**

26 The Court denied without prejudice Apple's request to seal Cisneros Exhibit 1376 as to
27 the redacted portions identified by Apple. Sealing Order at 20. Apple now seeks to seal more

1 narrowly tailored portions of the exhibit that reflect the most highly confidential information
2 regarding its recruiting strategies and practices and specific job levels, the public disclosure of
3 which would cause harm to Apple. This exhibit also contains personally identifying information
4 and contact information which Apple has redacted to protect the privacy of third parties.

5 **G. Kahn Exhibits 2 and 13**

6 The Court denied without prejudice Apple's requests to seal Kahn Exhibits 2 and 13
7 (deposition excerpts) as to the redacted portions identified by Apple. Sealing Order at 29-30.
8 Apple now seeks to seal only narrowly tailored portions of these exhibits that reflect the most
9 highly confidential information regarding its compensation strategies and practices and specific
10 job levels, the public disclosure of which would cause harm to Apple.

11 **H. Cisneros Exhibits FF, II, JJ**

12 The Court denied without prejudice Intuit's requests to seal Cisneros Exhibits FF, II, JJ
13 (deposition excerpts) as to the redacted portions identified by Intuit. Sealing Order at 15-16.
14 Intuit now seeks to seal only narrowly tailored portions of those exhibits that reflect the most
15 highly confidential information regarding Intuit's compensation and recruiting strategies and
16 practices, the public disclosure of which would cause harm to Intuit.

17 **I. Brown Exhibit 8**

18 The Court denied without prejudice Intuit's requests to seal Brown Exhibit 8 (deposition
19 excerpts) as to the redacted portions identified by Intuit. Sealing Order at 26. Intuit now seeks
20 to seal only narrowly tailored portions of the exhibit that reflect the most highly confidential
21 information regarding Intuit's compensation and recruiting strategies and practices, the public
22 disclosure of which would cause harm to Intuit. This exhibit also contains personally identifying
23 information which Intuit has redacted to protect the privacy of third parties.

24 **J. Kahn Exhibit 7**

25 The Court denied without prejudice Intuit's requests to seal Kahn Exhibit 7 (deposition
26 excerpts) as to the redacted portions identified by Intuit. Sealing Order at 29. Intuit now seeks
27 to seal only narrowly tailored portions of the exhibit that reflect the most highly confidential
28

1 information regarding Intuit's compensation and recruiting strategies and practices, the public
2 disclosure of which would cause harm to Intuit.

3 **K. Shaver Exhibit J**

4 The Court denied without prejudice Intuit's requests to seal Shaver Exhibit J (deposition
5 excerpts) as to the redacted portions identified by Intuit. Sealing Order at 359. Intuit now seeks
6 to seal only narrowly tailored portions of the exhibit that reflect the most highly confidential
7 information regarding Intuit's compensation and recruiting strategies and practices, the public
8 disclosure of which would cause harm to Intuit.

9 **L. Brown Ex. 9**

10 The Court denied without prejudice Intel's requests to seal Brown Declaration Exhibit 9
11 (deposition excerpts of the deposition of Daniel McKell) as to the redacted portions identified by
12 Intel. Sealing Order at 26. Intel now seeks to seal only narrowly tailored portions of that exhibit
13 that reflect the most highly confidential information regarding Intel's compensation practices, the
14 public disclosure of which would cause competitive harm to Intel. These proposed redactions
15 are consistent with the redactions sought by Intel in connection with the Plaintiffs' Opposition to
16 Defendants' Motion for Summary Judgment, and the basis for those proposed redactions are set
17 forth in the Declaration of John Mittelbach in Support of Defendants' Joint Administrative
18 Motion to File Under Seal. *See* Dkt. 695-01; Dkt. 657-11 (showing proposed redactions).

19 **M. Kahn Ex. 8**

20 The Court denied without prejudice Intel's requests to seal Brown Declaration Exhibit 9
21 (deposition excerpts of the deposition of Daniel McKell) as to the redacted portions identified by
22 Intel. Sealing Order at 29. Intel now seeks to seal only narrowly tailored portions of that exhibit
23 that reflect the most highly confidential information regarding Intel's compensation practices, the
24 public disclosure of which would cause competitive harm to Intel. Certain portions of the exhibit
25 also contain confidential compensation information regarding the deponent, Mr. McKell, which
26 Intel has redacted to protect his privacy. These proposed redactions are consistent with the
27 redactions sought by Intel in connection with the Plaintiffs' Opposition to Defendants' Motion

1 for Summary Judgment, and the basis for those propose redactions are set forth in the
 2 Declaration of John Mittelbach in Support of Defendants' Joint Administrative Motion to File
 3 Under Seal (Dkt. 695-01). These proposed redactions are consistent with the redactions sought
 4 by Intel in connection with the Plaintiffs' Opposition to Defendants' Motion for Summary
 5 Judgment, and the basis for those propose redactions are set forth in the Declaration of John
 6 Mittelbach in Support of Defendants' Joint Administrative Motion to File Under Seal. *See* Dkt.
 7 695-01; Dkt. 657-11 (showing proposed redactions).

8 **N. Shaver Ex. F**

9 The Court denied without prejudice Intel's requests to seal Brown Declaration Exhibit 9
 10 (deposition excerpts of the deposition of Daniel McKell) as to the redacted portions identified by
 11 Intel. Sealing Order at 34. Intel now seeks to seal only narrowly tailored portions of that exhibit
 12 that reflect the most highly confidential information regarding Intel's compensation practices, the
 13 public disclosure of which would cause competitive harm to Intel. Certain portions of the exhibit
 14 also contain confidential compensation information regarding the deponent, Mr. McKell, which
 15 Intel has redacted to protect his privacy. These proposed redactions are consistent with the
 16 redactions sought by Intel in connection with the Plaintiffs' Opposition to Defendants' Motion
 17 for Summary Judgment, and the basis for those propose redactions are set forth in the
 18 Declaration of John Mittelbach in Support of Defendants' Joint Administrative Motion to File
 19 Under Seal. *See* Dkt. 695-01; Dkt. 657-11 (showing proposed redactions).

20 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS' CONFIDENTIAL**
 21 **INFORMATION IN THE SEALED MATERIALS**

22 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial
 23 court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other
 24 confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G).
 25 The Ninth Circuit has "carved out an exception to the presumption of access to judicial records
 26 for a sealed discovery document [attached] to a nondispositive motion," where the requesting
 27 party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No.

1 C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana*
2 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A] ‘particularized showing’
3 under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of
4 sealed discovery material attached to nondispositive motions.”); *see also Pintos v. Pacific*
5 *Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in
6 nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them
7 under seal.”).

8 The redacted portions of the Sealed Materials contain confidential and commercially
9 sensitive information about employee compensation, including Defendants’ compensation data,
10 as well as information that reflects certain Defendants’ internal decision-making regarding their
11 business strategies related to compensation and internal assessments of their and other
12 employers’ competitive position in the labor market. Defendants also seek to keep under seal
13 those materials that reflect compensation practices, strategies and policies; recruiting and hiring
14 data, practices, strategies and policies; and personal identifying information of employees or
15 candidates. Defendants designated the foregoing information “Confidential” or “Attorneys Eyes
16 Only” under the Protective Order.

17 This Court has sealed substantially similar information in this case, including in its recent
18 sealing order dated March 14, 2014. *See* Order Granting in Part and Denying in Part Motions to
19 Seal dated March 14, 2014 (ECF No. 730); Order Granting in Part and Denying in Part Motions
20 to Seal dated September 30, 2013 (ECF No. 509). Moreover, as each of the Defendants’
21 separately filed declarations demonstrate, Defendants kept the sealed information confidential
22 and the public disclosure of this information would cause each Defendant harm by giving third-
23 parties (including individuals responsible for competitive decision-making) insights into
24 confidential and sensitive aspects of each of the Defendants’ strategies, competitive positions,
25 and business operations, allowing these third-parties to potentially gain an unfair advantage in
26 dealings with and against each of the Defendants.

1 A significant portion of the sealed information is employee compensation data. This type
 2 of information is regularly sealed because of its confidential and private nature. *See Renfro v.*
 3 *Unum*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal
 4 records containing plaintiffs' salary information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164,
 5 2007 WL 858060, at *2, 2007 BL 247444 (W.D. Wash. Mar. 16, 2007) (holding that salary
 6 review notices for third parties "who have not chosen to have their salary history placed into the
 7 public record" could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 U.S. Dist. LEXIS
 8 82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012) (noting that portions of summary
 9 judgment materials were filed under seal because they contained "confidential salary
 10 information.").

11 Similarly, compensation policies, practices and decisions are routinely subject to a
 12 sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, at
 13 *16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008) (noting that a
 14 "compensation policy" was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-
 15 4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order
 16 to enjoin a former employee from using a company's "confidential and/or trade secret employee
 17 compensation information").

18 In addition, good cause exists to seal confidential information relating to a company's
 19 internal business, recruiting or hiring practices, strategies and policies, including confidential
 20 analyses of a company's market position. *See Fed. R. Civ. Proc. 26(c)(1)(G)* (permitting sealing
 21 of "a trade secret or other confidential research, development, or commercial information");
 22 *Krieger v. Atheros Commc'ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at
 23 *3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its
 24 investment adviser that contained "sensitive and confidential information, including long-term
 25 financial projections, discussions of business strategy, and competitive analyses"); *Network*
 26 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,
 27 at *9 (N.D. Cal. Mar. 10, 2010) (sealing "internal information regarding [defendant's] business

1 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*
 2 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz.
 3 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”
 4 reason standard applicable to dispositive motions, including a “spreadsheet tracking information
 5 regarding potentially competitive products,” and other business strategy documents, such as
 6 information relating to “product competitiveness, and market and technological opportunities
 7 and risks”).

8 Additionally, good cause exists to seal information pertaining to Defendants’ recruiting
 9 policies and practices that are proprietary business methods and/or trade secrets. This
 10 confidential and commercially sensitive business information is non-public and should remain
 11 confidential under Rule 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential
 12 research, development, or commercial information”); *see also* Cal. Civ. Code § 3426.1(d)
 13 (defining trade secrets as information that “(1) Derives independent economic value, actual or
 14 potential, from not being generally known to the public or to other persons who can obtain
 15 economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable
 16 under the circumstances to maintain its secrecy.”).

17 Good cause also exists for sealing the identities and personal contact information of
 18 specific employees or applicants that are contained in the Sealed Materials. These employees or
 19 applicants have not sought to make their identities known or placed in the public record. *Nettles*
 20 at *2 (holding that the interests of private parties outweighed the public’s right of access with
 21 respect to information pertaining to third party salary and employment separation information).

22 **III. CONCLUSION**

23 For the foregoing reasons, Defendants respectfully request that this Court order the
 24 portions of the Sealed Materials identified in each Defendant’s declaration to be placed under
 25 seal. A proposed order granting Defendants’ renewed motion to seal is being filed concurrently
 26 herewith. In accordance with this Court’s Sealing Order (ECF No. 730 at 36:9-12), Defendants
 27 are concurrently filing on ECF sealed versions of the documents sought to be sealed with

1 highlights indicating the proposed redactions and are not submitting any Chambers Copies.

2
3 Dated: March 28, 2014

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4 **ATTESTATION:** The filer attests that concurrence in the filing of this document has been
5 obtained from all signatories.
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